



UNITED STATES DEPARTMENT OF COMMERCE
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AS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/128,721	08/04/98	CARROLL	T

023456 IM22/1219
WADDEY & PATTERSON
414 UNION STREET, SUITE 2020
BANK OF AMERICA PLAZA
NASHVILLE TN 37219

EXAMINER

GUARRIELLO, J

ART UNIT	PAPER NUMBER
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1771

8

DATE MAILED: 12/19/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/128721

Applicant(s)

Carro 11

Examiner

John Guarriello

Group Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address--

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 9/1/2000, 10/11/2000.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 111; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-29 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-9, 11-29 is/are rejected.
- ☒ Claim(s) 10 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Interview Summary, PTO-413 #4
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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DETAILED ACTION

15. The examiner acknowledges papers # 5-7 the amendment of 9/1/2000, power of attorney revocation and the acceptance of power of attorney 10/11/2000.

16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1-9, 11 & 12 are
17. Claim ~~1~~ is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 7, applicant's argument was considered regarding "reasonable degree of certainty" but, it is still not clear what is encompassed by the phrase "molecular weight distribution range" because in the polymer art if the **criticality of the invention** is related to the polymer then the "molecular weight" should be referred to as **weight average molecular**

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weight, number average molecular weight or some other standard that is recognized in the polymer art.

In claim 18, line 4, it is still not clear because the Markush group is improper with the term “essentially”. Markush groups usually are expressed as “selected from the group consisting of”.

In claim 28, line 3, it is still not clear because the Markush group is improper for the reasons given in claim 18.

18. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In the response by applicant no clear response was noted for the record to this objection to claim 10, clarify.

19. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 11-29 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Langley.

Langley does not specifically describe the molecular weight distribution range of the coated chemical barrier composite. However, it appears as though Langley uses a chemical barrier composite which is substantially identical as the presently claimed chemical barrier composite (see present claims 2 and 3). Thus, it is believed by the examiner that the chemical barrier layers of Langley inherently have a molecular weight distribution range within

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the presently claimed ranges. In addition, the presently claimed molecular weight distribution range would obviously have been provided in the composite of Langley. Note, **In re Best**, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made under 35 USC 102. Furthermore, regarding applicant's argument of the substitution of low density polyethylene, the examiner has considered this argument but it is still not clear to the examiner why applicant objects. Moreover, the examiner has considered the arguments regarding page 16, Table III in the specification, but notes this is not in the present claims. Consequently, the results of Table III would be expected not unexpected since more layers would increase puncture resistance.

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is (703) 308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The

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fax phone number for the organization where this application or proceeding is assigned is (703) 305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



John J. Guarriello:gj

Patent Examiner

December 15, 2000


BLAINE COPENHEAVER
PRIMARY EXAMINER